



7413 Westshire Drive
Lansing, Michigan 48917

Phone: (517) 627-1561
Fax: (517) 627-3016
Web: www.hcam.org

Thank you Senator Marleau and committee members for the opportunity to speak with you today regarding Senate Bill 975.

My name is Carolyn Anderson. I serve as the Board Chair for the Health Care Association of Michigan. I am a licensed nursing home administrator and registered nurse. I currently work for NexCare Health System headquartered in Brighton, Michigan. NexCare operates 17 nursing and rehabilitation facilities throughout the state.

Also, with me is Beth Bacon, Vice President of Regulatory Services for HCAM. HCAM is a statewide association representing proprietary, not for profit, county medical care and hospital-based nursing and rehabilitation facilities. HCAM also represents assisted living settings, including homes for the aged, through the Michigan Center for Assisted Living – a division of HCAM.

Senate Bill 975 presents significant challenges to nursing facilities because of the unique issues and nature of long-term care. The sometimes conflicting relationship that exists between the payers of the service, who are often family members, and the recipients of the care—i.e., the residents: the fact that these facilities are often relatively small and highly dependent upon individual staff members providing a full range of services on a 24-7 basis, and the challenge of recruiting and retaining qualified staff make these facilities unique in the health care environment.

For these reasons and others I will share, we continue to request that nursing facilities and homes for the aged be exempt from the bill. The following details many of our concerns with the bill. Short of exemption for nursing facilities these concerns and others would need to be addressed.

The current language defining what constitutes the “conscience” of an “individual” or “entity” is vague, and also contains separate definitions for the conscience of an individual and that of an entity. Illinois is the only other state that has a “Health Care Right of Conscience Act,” and one possibility is to borrow from that definition of “conscience.” Even with such an amendment, the definition of “conscience,” as a practical matter, would continue to allow anything and everything to be considered.

Many of the problems which Senate Bill 975 creates for nursing facilities are due to the broad and general definitions given to what an employee can object to as a matter of conscience. Some of these problems can be avoided by stating specifically what procedures can be objected to in these facilities – for example, the act of removal of a life-sustaining device such as a ventilator or apparatus for non-oral hydration or nutrition.

It should also be clearly stated that any request to be exempt from providing a specific health service that is not included in this act may be denied by the facility.

Senate Bill 975 currently applies to a broad range of employees of nursing facilities that have no role in the provision of health care, like housekeeping, maintenance and business office personnel. The definition of "health provider" should be limited to those individuals who do provide health care services. The only other state that has a law similar to Senate Bill 975—Illinois—limits its applicability to "physicians or health care personnel."

Senate Bill 975 applies to a long list of "health care facilities," including "a home for the aged." Homes for the Aged (HFA) should not be included, since they do not provide "health care services" as do the other facilities included in the legislation, but rather provide support and assistance services that are not health care services.

Nursing facilities struggle with workforce issues. There is a shortage of nurses and working in long term care is not always the first option. Allowing employees to object to performing certain health care services further restricts the pool of workers to cover 24/7 - 365 days of care. Under Senate Bill 975 employers could not discriminate against, including refuse employment to an employee who has certain objections. This bill will exacerbate the effects of health care personal shortages in this profession and further reduce the professions ability to recruit and retain quality employees.

Unique to nursing facilities is the requirement to meet specific staffing ratios and levels. They must report staffing data to the Bureau of Health Care Services on a quarterly basis. For these expectations to be met, each employee with a designated role in direct care must be capable and willing to perform the entire array of medical services anticipated by virtue of their licensure and certification. Would an employee objecting to perform a certain health service be counted as a full time equivalent in calculating staffing levels? Senate Bill 975 would allow individual health care professions to opt out of providing a service expected of their licensure and certification therefore leaving the care of residents at risk and the nursing facility at risk for severe regulatory enforcement action.

Nursing facilities operate 24 hours a day 365 days a year. The health care dynamic that exists in the average 100 bed skilled nursing facility requires maximum flexibility of all employee resources to meet the continuously changing needs of the resident population. The standards of the profession and the expectations of the extraordinarily strict federal and state regulations demand the delivery of person centered, comprehensive care at all times. Paramount to this is continuity and consistent assignment of employees to residents.

Senate Bill 975 will reduce a facility's ability to provide consistent assignment of personnel. It will impede the facility's ability to ensure comprehensive care to each resident as their medical circumstance changes or desire of how to be treated changes over time.

Senate Bill 975 also allows a "health care payer" to refuse payment for a specific health care service or procedure as a matter of conscience, and the definition of health care payer includes "individuals."

This presents a significant problem for nursing facilities, because many residents have other family members responsible for paying for their care—in both private pay situations and in the case of the “patient pay amount” required by residents whose care is paid by Medicaid. Senate Bill 975 creates potential conflict between the desires of a resident and the wishes—often financially driven—of a family member managing the resident’s finances.

To put it bluntly, a family member—i.e., the “health care payer”—can refuse to pay for a service/procedure, citing a conscientious or religious objection, to the service the resident desires.

Because of the problems that are often created between the care desired by the resident and the financial interests of some family members, SB 975 should specify that the rights and wishes of the resident will always prevail. This would be in line with current state and federal law under the Patients’ Bill of Rights and the Resident Rights section of Medicare and Medicaid certification.

As I stated earlier, Senate Bill 975 presents significant challenges to nursing facilities because of the unique issues and nature of long-term care. I have shared many examples of the difficulty in operationalizing the provisions of this bill and continue to ask that we be exempted.

Short of exemption for nursing facilities, HCAM is committed to further discussions with the bill sponsor and interested parties to promote a workable outcome to Senate Bill 975.

Thank you and we would be happy to answer any questions you may have.